

**STATE OF MICHIGAN**  
**DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH**  
**OFFICE OF FINANCIAL AND INSURANCE REGULATION**  
**Before the Commissioner of Financial and Insurance Regulation**

**In the matter of**

**XXXXXX**

**Petitioner**

**v**

**File No. 120806-001**

**Blue Cross Blue Shield of Michigan**  
**Respondent**

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**Issued and entered**  
**this 17<sup>th</sup> day of October 2011**  
**by R. Kevin Clinton**  
**Commissioner**

**ORDER**

**I. PROCEDURAL BACKGROUND**

On April 22, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on April 29, 2011.

The Commissioner immediately notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and requested the information it used to make its final adverse determination. BCBSM's response was received on May 10, 2011.

The issue in this external review can be decided by a contractual analysis. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical review by an independent review organization.

**II. FACTUAL BACKGROUND**

The Petitioner's health care benefits are defined in the BCBSM *Community Blue Group Benefits Certificate* (the certificate).

From August 30 through October 26, 2010, the Petitioner received outpatient mental health therapy from XXXXX. The amount charged for this therapy was \$1,434.00.

BCBSM denied coverage for the therapy, stating the therapist was not an eligible provider under the terms of the certificate. The therapist possessed a master of social work (MSW) degree.

The Petitioner appealed BCBSM's denial. BCBSM held a managerial-level conference and then issued a final adverse determination dated March 1, 2011, affirming its denial.

### **III. ISSUE**

Is BCBSM required to cover the Petitioner's mental health therapy?

### **IV. ANALYSIS**

#### Petitioner's Argument

The Petitioner states that before she began the therapy, XXXXX contacted BCBSM to determine if it would be covered. Based on the information given by BCBSM's customer service representative, the Petitioner believed it would be covered. After nearly two months of treatment, the Petitioner discovered that BCBSM was denying the claims for the therapy.

The Petitioner argues that BCBSM should be responsible for coverage because the contract language is not sufficiently clear. The Petitioner states the language used by BCBSM in its original letter denying coverage ("Treatments by a certified Social Worker are not eligible for payment when the services are provided in an office setting") is not present in the certificate. She also indicates she was given incorrect information by BCBSM concerning the coverage. Additionally, the Petitioner states that BCBSM covered previous treatment by a social worker and she expected that the services at XXXXX would also be covered.

#### BCBSM's Argument

BCBSM advised that XXXXX is not an eligible provider under the terms of the certificate. BCBSM does not pay for outpatient mental health services from an MSW in an office setting, only from physicians and fully licensed psychologists.

BCBSM also denies that incorrect information was given to XXXXX. BCBSM states, "[W]hen the XXXXX contacted BCBSM for benefit information, the representative informed BCBSM that the provider of services was [a physician]." Based on the assumption that the provider was a physician, not a social worker, BCBSM states its representative correctly informed XXXXX that the therapy would be covered.

### Commissioner's Review

The Petitioner has argued that her outpatient mental health therapy should be covered because she was given wrong information about her benefits and acted in reliance on that information. BCBSM denies the allegation. Under the Patient's Right to Independent Review Act (PRIRA), there are no hearings and the Commissioner has no way to resolve factual disputes like the one raised here that depend on evidence such as oral statements and credibility. Moreover, the Commissioner lacks the authority under PRIRA to apply such doctrines as reliance or estoppel. The Commissioner's role is limited to determining whether BCBSM correctly applied the terms and conditions of the certificate and state law.

The certificate covers outpatient mental health therapy if it is (1) provided in an office setting by a physician<sup>1</sup> or fully licensed psychologist or if it is (2) provided in a participating outpatient mental health facility.<sup>2</sup> In "Section 4: Coverage for Physician and Other Health Care Provider Services," the certificate states:

#### **Outpatient Mental Health Care**

[W]e pay for the following outpatient mental health services when provided by a physician or fully licensed psychologist in an office setting or in a participating outpatient mental health facility . . .

- Individual psychotherapeutic treatment of less than 20 minutes when provided only in a participating outpatient mental health facility
- Individual psychotherapeutic treatment of more than 20 minutes
- Family counseling for members of a patient's family
- Group psychotherapeutic treatment
- Psychological testing by:
  - A physician or a fully licensed psychologist or
  - A limited licensed psychologist when prescribed and performed under, and billed by, a physician or fully licensed psychologist

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<sup>1</sup> The certificate defines "physician" as a doctor of medicine, osteopathy, podiatry, chiropractic or an oral surgeon.

<sup>2</sup> BCBSM states that while XXXXX is a participating provider of social work in an office setting, it is not a participating outpatient mental health facility.

The Commissioner concludes that the outpatient mental health therapy provided to the Petitioner by an MSW from August 30 through October 26, 2011, is not a covered benefit because it was not provided in a participating outpatient mental health facility nor was it provided by a physician or fully licensed psychologist in an office setting.

#### **V. ORDER**

Blue Cross Blue Shield of Michigan's final adverse determination of March 1, 2011, is upheld. BCBSM is not required to cover the Petitioner's outpatient mental health therapy from August 30 through October 26, 2011.

This is a final decision of an administrative agency. Under MCL 550.1915(1), any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.